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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 14-00306 WHA

Plaintiff,

v.

LUKE D. BRUGNARA,

Defendant.

**MEMORANDUM AND
DESCRIPTION OF JUROR'S
TIRADE AND PHYSICAL
CONDUCT**

On Friday, May 15, an issue arose concerning misconduct by Juror No. 5, including his bolting from the deliberations, yelling in the public hallways about the deliberations, and having lied about his criminal history during voir dire. After a discussion with the parties on Friday afternoon, both sides submitted briefing on the issue over the weekend. The Court then determined that it was necessary to individually question Juror No. 5 about his criminal history, his alleged misrepresentations during voir dire, his misconduct in the public hallways, and other items. Both sides were ordered to say nothing and to let the judge ask all questions.

On Monday morning, Juror No. 5 was brought into the courtroom for inquiry, outside of the presence of the other jurors (who were told not to deliberate until further notice). Juror No. 5, who was tall, physically fit, thin, and about 68-years old, took his usual seat, alone, in the jury box. After trying to put Juror No. 5 at ease, the Court inquired as to what country he was born in and whether he had lived in New York, this to see if it lined up with the rap sheet information supplied by the government. When it did line up, the Court asked about a prior criminal charge in New York. In response to the question about the prior criminal charge, Juror No. 5 took the

1 Fifth Amendment but eventually admitted that he had, in fact, been charged in that criminal case.
2 At first, Juror No. 5 seemed pleasant but then became defensive and thereafter extremely
3 belligerent. He then launched into a twenty-minute relentless political tirade. The main purpose
4 of this memorandum is to describe the physical aspects of Juror No. 5's tirade that will not
5 necessarily be made apparent on the reporter's transcript.

6 After Juror No. 5 was asked if he had ever been in prison or had been tortured, he leapt
7 up from his seat in the jury box and began ranting at the top of his lungs, waiving his arms,
8 beating his chest, and pacing within in the jury box. His facial expression and overall demeanor
9 were belligerent. He launched into an incoherent tirade about Tito, Communists, Nazis, and how
10 he had been imprisoned and tortured but escaped, despite machine-gun fire. He declared that the
11 judge was a "Nazi judge," the jury was a "Nazi jury," the "lawyers are crooks," and "Brugnara,
12 he's Italian, he's not guilty." This filibuster lasted over twenty minutes. The undersigned judge
13 attempted to calm him down, and tried to get his attention at least five different times, but could
14 not get a word in edgewise. (Despite the Court's order that both parties remain silent, defendant
15 Luke Brugnara communicated to Juror No. 5 by clapping his hands at him and shouting to him
16 "this isn't helping me.")

17 Juror No. 5 continued to stand and pace, continued to shout without pause, removed his
18 heavy parka (which had two American flags taped to it) and whipped it against seats in the jury
19 box in a violent manner. He wildly gesticulated as he ranted about Nazis, Communists, and how
20 much he loved America. As the court security officers attempted to contain him, he resisted by
21 waving them off with his arms. At one point, Juror No. 5 took his shoe in his right hand and
22 cocked his arm as if he were either going to throw it at somebody or use it as a weapon against
23 the court security officers.

24 Eventually, a deputy marshal told the judge that the situation was not safe and that Juror
25 No. 5 had to be removed. Three court security officers then physically evacuated him from the
26 courtroom and placed him in an empty courtroom to cool off.

27 After Juror No. 5 had been cooling down for about fifteen minutes, the undersigned judge
28 asked the court security officers to bring him back into the courtroom so he could be officially

1 discharged from jury service. Before Juror No. 5 completed his first step back into the
2 courtroom and before the undersigned judge could even say one word, Juror No. 5 launched into
3 another screaming tirade that lasted for five minutes, before court security officers again
4 removed him. He could be heard screaming in the hallways as court security officers escorted
5 him away.

6 The FTR file from this episode has been made part of the record and has been filed under
7 seal.

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10 Dated: May 21, 2015.

Wm. Alsup
11 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE